

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA

NIGHT BOX
FILED

Case No. 00-6023 CIV-Hurley
Magistrate Lynch

FEB 06 2001 ✓

CLERK, USDC / SDFL / WPD

R/S Associates, a Florida limited
partnership, and Dan Shooster,

Plaintiffs

vs.

Bob Yari, and Forum Arlington
Properties, Ltd., and Alliance Management Co., LLC

Defendants

**DEFENDANTS' MOTION FOR A PROTECTIVE ORDER AND RESPONSE TO
PLAINTIFFS' NOTICE OF INTENT TO TAKE AND RELY UPON DEPOSITIONS**

Come now the Defendants, Bob Yari, Forum Arlington Properties, Ltd. and Alliance Commercial Management, by and through their undersigned counsel, to seek a protective order pursuant to Fed. R. Civ. P. 26(c) and to respond to Plaintiffs' Notice of Intent to Take and Rely Upon Depositions Regarding Defendants' Motion to Dismiss Plaintiffs' First Amended Complaint for Lack of Personal Jurisdiction. In support thereof, Defendants state:

1. The Plaintiffs filed their First Amended Complaint on or about February 1, 2000, and served it on Defendants' counsel on February 4, 2000. The First Amended Complaint does not contain any allegations concerning the minimum contact between the Defendants and the forum state pursuant to which Plaintiffs allege that this Court should exercise jurisdiction over the Defendants.

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2. On February 17, 2000, Defendants filed a motion to dismiss the First Amended Complaint for lack of personal jurisdiction, a Memorandum of Law and the Affidavit of Bob Yari in support of the motion.

3. On February 28, 2000, Plaintiffs filed their response to Defendants' Motion to Dismiss, attached to which was the Affidavit of Dan Shooster.

4. By letter dated February 28, 2000, Plaintiffs' counsel contacted Defendants' counsel requesting that she **immediately** provide him with the dates on which Defendant Bob Yari and his chief financial officer, Dennis Brown, would be available to give depositions in Los Angeles, California (emphasis in original).

5. Defendants' counsel declined the request, but indicated that the depositions could be taken if the Court scheduled an evidentiary hearing.

6. Plaintiffs have filed and served notices of taking the Defendants' depositions in California on April 17, 2000. *See Exhibit A.*

7. The Defendants should not be required to expend the sums of money necessary for their counsel to travel from the Southern District of Florida to Los Angeles, California to defend depositions, nor should the Defendants' agents have to take time away from their normal business activities to provide such depositions, unless and until this Court determines whether the affidavits submitted in support of and in opposition to the Motion to Dismiss are irreconcilable. *See Venetian Salami Co. v. Parthenais*, 554 So. 2d 499, 502 (Fla. 1989) (If affidavits conflict, limited evidentiary hearing is required).

8. If the Court determines that an evidentiary hearing should be held on the jurisdictional issue, rather than having Plaintiffs' and Defendants' counsel travel to California for depositions, Plaintiffs should be required to bear the expense of Mr. Yari's travel from California to Florida to attend the hearing.

9. A protective order is sought because the deposition notices are premature, and the discovery sought would unduly burden the Defendants and cause them to incur undue and significant expense.

WHEREFORE, the Defendants respectfully request that the Court (a) issue a protective order, prohibiting Plaintiffs from deposing Defendants in California and requiring Plaintiffs to bear the expense of travel to Florida for Defendants' witnesses if the Court determines an evidentiary hearing is necessary; (b) deny Plaintiffs' request to refrain from entering an order on Defendants' Motion to Dismiss until depositions are taken; and (c) decide the motion on the affidavits which have been filed in this cause.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing instrument has been furnished by U.S. mail to Keith A. Goldbaum, Esquire, Friedman, Rosenwasser & Goldbaum, P.A., 5355 Town Center Road, Suite 801, Boca Raton, Florida 33486, this 6th day of March, 2000.

CERTIFICATION OF GOOD FAITH

I HEREBY CERTIFY that, prior to filing this motion, I made a good faith attempt to persuade Plaintiffs' counsel to forego taking discovery in California until the Court decided whether an evidentiary hearing is required and to seek Plaintiffs' agreement that it would bear Defendants' travel expense to Florida if an evidentiary hearing is scheduled.

Respectfully submitted,

NASON, YEAGER, GERSON, WHITE & LIOCE, P.A.
1645 Palm Beach Lakes Boulevard, Suite 1200
West Palm Beach, Florida 33401
Telephone: (561) 686-3307
Facsimile: (561) 686-5442
E-mail: ejames@nygw1.com
Attorneys for Defendants
Florida Bar No.: 791709

By:


ELAINE JOHNSON JAMES

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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

CASE NO. 00-6023 CIV HURLEY

R/S ASSOCIATES, a Florida
Limited Partnership and
DAN SHOOSTER

Plaintiff

vs.

ROBERT YARI and FORUM
ARLINGTON PROPERTIES, LTD. AND
ALLIANCE COMMERCIAL MANAGEMENT,

Defendants

NOTICE OF TAKING DEPOSITION DUCES TECUM
FOR THE LIMITED PURPOSE OF ESTABLISHING
JURISDICTION OVER DEFENDANTS

PLEASE TAKE NOTICE that KEITH A. GOLDBAUM, ESQUIRE of FRIEDMAN, ROSENWASSER & GOLDBAUM, P.A., Attorneys for the Plaintiffs, will take the Deposition of "Robert Yari" at the time and place listed below:

LOCATION: Esquire Deposition Services
6222 Wilshire Blvd.
Los Angeles, California 90048

DATE: Monday, April 17, 2000
TIME: 9:00 a.m.

DUCES TECUM: To bring with you all the documents requested in Exhibit "A" attached hereto.

and upon oral examination, before a court reporter with the firm of Esquire Deposition Services or any other Notary Public or other officer authorized by law to take depositions in the state of California. The deposition will continue from day to day until completed. You are hereby notified to appear and take part in said examination as you may be advised and bring with you those items on the attached Exhibit "A".

This deposition is being taken for the purposes of discovery, for use at trial, or for such other purposes as are permitted under the applicable Statutes or Rules of Court.

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Respectfully submitted,

FRIEDMAN, ROSENWASSER & GOLDBAUM, P.A.
Attorneys for Plaintiffs
5355 Town Center Road #801
Boca Raton, Florida 33486
Tel: (561) 395-5511
Fax: (561) 368-9274

by:



KEITH A. GOLDBAUM, ESQUIRE
FBN 0475637

Date:

2/2/00

cc: Esquire Deposition Services

CERTIFICATE OF SERVICE

I HEREBY CERTIFY a copy of the foregoing has been forwarded via facsimile and first class mail to Elaine Johnson James, Esquire, 1645 Palm Beach Lakes Boulevard, Suite 1200, West Palm Beach, Fl 33401 this 2 day of May, 2000.

FRIEDMAN, ROSENWASSER & GOLDBAUM, P.A.
Attorneys for Plaintiffs
5355 Town Center Road #801
Boca Raton, Florida 33486
Tel: (561) 395-5511
Fax: (561) 368-9274

by: 

KEITH A. GOLDBAUM, ESQUIRE
FBN 0475637

EXHIBIT "A"

1. All plane tickets, travel receipts, notes and any and all documents evidencing all trips you or any of the defendants in the aforescribed case have made to Florida and/or all contacts you or any of the aforescribed defendants have had with the State of Florida regarding the aforescribed case.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

CASE NO. 00-6023 CIV HURLEY

R/S ASSOCIATES, a Florida
Limited Partnership and
DAN SHOOSTER

Plaintiff

vs.

ROBERT YARI and FORUM
ARLINGTON PROPERTIES, LTD. AND
ALLIANCE COMMERCIAL MANAGEMENT,

Defendants

NOTICE OF TAKING DEPOSITION DUCES TECUM
FOR THE LIMITED PURPOSE OF ESTABLISHING
JURISDICTION OVER DEFENDANTS

PLEASE TAKE NOTICE that KEITH A. GOLDBAUM, ESQUIRE of FRIEDMAN, ROSENWASSER & GOLDBAUM, P.A., Attorneys for the Plaintiffs, will take the Deposition of the "most knowledgeable person as to Defendants' Forum Arlington Properties, Ltd. and Alliance Commercial Management's contacts with the State of Florida" at the time and place listed below:

LOCATION: Esquire Deposition Services
6222 Wilshire Blvd.
Los Angeles, California 90048

DATE: Monday, April 17, 2000

TIME: 11:00 a.m. (or immediately following the
deposition of Robert Yari)

DUCES TECUM: To bring with you all the documents requested in Exhibit "A" attached hereto.

and upon oral examination, before a court reporter with the firm of Esquire Deposition Services or any other Notary Public or other officer authorized by law to take depositions in the state of California. The deposition will continue from day to day until completed. You are hereby notified to appear and take part in said examination as you may be advised and bring with you those items on the attached Exhibit "A".

This deposition is being taken for the purposes of discovery, for

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use at trial, or for such other purposes as are permitted under the applicable Statutes or Rules of Court.

Respectfully submitted,

FRIEDMAN, ROSENWASSER & GOLDBAUM, P.A.
Attorneys for Plaintiffs
5355 Town Center Road #801
Boca Raton, Florida 33486
Tel: (561) 395-5511
Fax: (561) 368-9274

by:



KEITH A. GOLDBAUM, ESQUIRE
FBN 0475637

Date:

3/2/00

cc: Esquire Deposition Services

CERTIFICATE OF SERVICE

I HEREBY CERTIFY a copy of the foregoing has been forwarded via facsimile and first class mail to Elaine Johnson James, Esquire, 1645 Palm Beach Lakes Boulevard, Suite 1200, West Palm Beach, Fl 33401 this 2 day of MARCH, 2000.

FRIEDMAN, ROSENWASSER & GOLDBAUM, P.A.
Attorneys for Plaintiffs
5355 Town Center Road #801
Boca Raton, Florida 33486
Tel: (561) 395-5511
Fax: (561) 368-9274

by:

Keith A. Goldbaum
KEITH A. GOLDBAUM, ESQUIRE
FBN 0475637

EXHIBIT "A"

1. All plane tickets, travel receipts, notes and any and all documents evidencing all trips you or any of the defendants in the aforescribed case have made to Florida and/or all contacts you or any of the aforescribed defendants have had with the State of Florida regarding the aforescribed case.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

CASE NO. 00-6023 CIV HURLEY

R/S ASSOCIATES, a Florida
Limited Partnership and
DAN SHOOSTER

Plaintiff

vs.

ROBERT YARI and FORUM
ARLINGTON PROPERTIES, LTD. AND
ALLIANCE COMMERCIAL MANAGEMENT,

Defendants

NOTICE OF TAKING DEPOSITION DUCES TECUM
FOR THE LIMITED PURPOSE OF ESTABLISHING
JURISDICTION OVER DEFENDANTS

PLEASE TAKE NOTICE that KEITH A. GOLDBAUM, ESQUIRE of FRIEDMAN, ROSENWASSER & GOLDBAUM, P.A., Attorneys for the Plaintiffs, will take the Deposition of "Dennis Brown, Chief Financial Officer of Arlington Properties, Ltd. and Alliance Commercial Management at the time and place listed below:

LOCATION: Esquire Deposition Services
6222 Wilshire Blvd.
Los Angeles, California 90048

DATE: Monday, April 17, 2000
TIME: 1:00 a.m. (or immediately following the deposition
of Representatives of Forum Arlington and
Alliance Commercial)

DUCES TECUM: To bring with you all the documents requested in
Exhibit "A" attached hereto.

and upon oral examination, before a court reporter with the firm of Esquire Deposition Services or any other Notary Public or other officer authorized by law to take depositions in the state of California. The deposition will continue from day to day until completed. You are hereby notified to appear and take part in said examination as you may be advised and bring with you those items on the attached Exhibit "A".

This deposition is being taken for the purposes of discovery, for

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use at trial, or for such other purposes as are permitted under the applicable Statutes or Rules of Court.

Respectfully submitted,

FRIEDMAN, ROSENWASSER & GOLDBAUM, P.A.
Attorneys for Plaintiffs
5355 Town Center Road #801
Boca Raton, Florida 33486
Tel: (561) 395-5511
Fax: (561) 368-9274

by: 

KEITH A. GOLDBAUM, ESQUIRE
FBN 0475637

Date: 3/2/00

cc: Esquire Deposition Services

CERTIFICATE OF SERVICE

I HEREBY CERTIFY a copy of the foregoing has been forwarded via facsimile and first class mail to Elaine Johnson James, Esquire, 1645 Palm Beach Lakes Boulevard, Suite 1200, West Palm Beach, Fl 33401 this 2 day of MARCH, 2000.

FRIEDMAN, ROSENWASSER & GOLDBAUM, P.A.
Attorneys for Plaintiffs
5355 Town Center Road #801
Boca Raton, Florida 33486
Tel: (561) 395-5511
Fax: (561) 368-9274

by: 

KEITH A. GOLDBAUM, ESQUIRE
FBN 0475637

EXHIBIT "A"

1. All plane tickets, travel receipts, notes and any and all documents evidencing all trips you or any of the defendants in the aforescribed case have made to Florida and/or all contacts you or any of the aforescribed defendants have had with the State of Florida regarding the aforescribed case.